

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JOHN MILLER, Plaintiff, Case No. 2:10-cv-01620-PMP-GWF  
vs. **FINDINGS AND RECOMMENDATIONS**  
FREDERICK LEISSLER, Defendants.

On September 21, 2010, Plaintiff filed his Motion to Proceed *In Forma Pauperis* and Civil Rights Complaint pursuant to 42 U.S.C. § 1983 (#1). The Court granted Plaintiff's *in forma pauperis* application and screened Plaintiff's complaint, which alleges that Defendant committed the tort of conversion by taking control of Plaintiff's paintings, U.S. mint coins, art supplies and other personal property. (#2). The Court found that Plaintiff had failed to show that his allegations were traceable to the state for the purpose of a §1983 claim and that Plaintiff had failed to allege a violation of any other federal law. (#2). As a result, the Court dismissed Plaintiff's complaint without prejudice and allowed Plaintiff 30 days to amend his complaint if he believed he could remedy the deficiencies. (*Id.*) Furthermore, the Court notified Plaintiff that failure to amend his complaint by November 24, 2010 might result in this action being dismissed with prejudice. (*Id.*) To date, Plaintiff has failed to file an amended complaint and the time allotted has expired. As a result, the Court will recommend that this action be dismissed with prejudice. Accordingly,

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**IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint (#3) should be **dismissed with prejudice** based on Plaintiff's failure to file an amended complaint alleging viable claims within the time allotted by the Court.

## NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 11th day of January, 2011.

George Foley Jr.  
**GEORGE FOLEY, JR.**  
**UNITED STATES MAGISTRATE JUDGE**